Ensuring Early Access to Legal Counsel: Exploring Implementation and Outcomes in Two Jurisdictions

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Ensuring Early Access to Legal Counsel: Exploring Implementation and Outcomes in Two Jurisdictions

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Researcher-Practitioner Partnership

- **NORC at the University of Chicago**
  - Genevieve Citrin Ray, *Senior Research Director*
  - Jeanette Hussemann, *Principal Research Scientist*

- **Urban Institute**
  - Emily Tiry, *Senior Research Associate*

- **MW Consulting**
  - Michael Wilson, *Economist*

- **Salt Lake City, Utah**
  - Leslie Howitt, *Research and Data Analyst*

- **Barry County, Michigan**
  - Kerri Selleck, *Chief Public Defender*
  - Jonah Siegel, *Research Director, Michigan Indigent Defense Commission*

*This project was funded by the Stand Together Foundation, https://standtogetherfoundation.org/*
Agenda

• Study Background & Goals
• Site Partners
• Outcome Analysis
• Cost-Benefit Analysis
• Discussion
• Questions
Background

• *Gideon v. Wainwright* (1963)
  – All individuals accused of a crime have the right to an attorney, and if one is unable to afford an attorney, the state will provide a free attorney

• *Rothgery v. Gillepsie County* (2008)
  – Counsel must be provided at all critical stages of a case
  – What is a ‘critical stage’?
Background

• Counsel at first appearance (CAFA) is a critical stage

• Findings have shown that CAFA is associated:
  – Reduced bail
  – Shorter and less severe sentencing outcomes
  – Less likelihood of being held pretrial (or shorter pretrial holds)

• Over half of the states are providing CAFA in some form

• Little rigorous research
Goals & Research Questions

• Goals
  – Study the outcomes and costs associated with providing legal counsel at first appearance
  – Develop and disseminate a cost-benefit analysis tool to build capacity across jurisdictions

• Research Questions
  – Does providing counsel at first appearance in court have an impact on case outcomes?
  – How much does it cost to implement counsel at first appearance?
  – What cost-savings are associated with providing counsel at first appearance?
Site Selection

- Partner with two sites who had implemented CAFA
  - Implemented CAFA rather recently
  - Provide pre- and post-implementation data, including jail, defense, court data
  - Buy-in from stakeholders
Site Partners

1. Barry County, Michigan
   - Kerri Selleck, Chief Public Defender
   - Jonah Siegel, Research Director, Michigan Indigent Defense Commission

2. Salt Lake City, Utah
   - Leslie Howitt, Research and Data Analyst
Data

- Barry County, MI
  - Criminal cases filed between:
    • 3/1/2018 – 12/31/2018: control/pre-implementation group
    • 3/1/2019 – 12/31/2019: treatment/post-implementation group

- Salt Lake City, UT
  - CAFA began on 9/1/2019
  - Criminal cases with 1st appearances between 9/1/2018 – 2/28/2020
    • 9/1/2018 – 1/31/2019: control/pre-implementation group
    • 9/1/2019 – 2/28/2020: treatment/post-implementation group
Barry County, MI

- **District Court**
  - Civil cases with claims up to $25,000, landlord-tenant matters, traffic violations and misdemeanor criminal cases.
  - All first appearance hearings occur in a District Court with the more serious criminal cases bound over to Circuit Court.

- **Circuit Court**
  - Trial courts with jurisdiction over civil cases with claims over $25,000 and all felony criminal cases

- **Analysis: Interrupted Times Series**
  - District Court: In-Custody and Out-of-Custody Cases
  - Circuit Court: In-Custody and Out-of-Custody Cases
## Barry County, MI

<table>
<thead>
<tr>
<th></th>
<th>Immediate change direction</th>
<th>Immediate change amount</th>
<th>Change over time direction compared to pre-CAFA</th>
<th>Change over time amount compared to pre-CAFA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>In-custody</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percent pleading guilty at first appearance</td>
<td>Decrease</td>
<td>-6%</td>
<td>None</td>
<td>n/a</td>
</tr>
<tr>
<td><strong>Out-of-custody</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Days from filing to disposition</td>
<td>Decrease</td>
<td>-36.08 days</td>
<td>None</td>
<td>n/a</td>
</tr>
<tr>
<td>Percent pleading guilty at first appearance</td>
<td>Decrease</td>
<td>-9%</td>
<td>Increase</td>
<td>1% per month</td>
</tr>
<tr>
<td>Percent sentenced to probation</td>
<td>Increase</td>
<td>11%</td>
<td>None</td>
<td>n/a</td>
</tr>
<tr>
<td>Fines/fees sentence (dollars)</td>
<td>None</td>
<td>n/a</td>
<td>Decrease</td>
<td>-$53.14</td>
</tr>
</tbody>
</table>
Percent Pleading Guilty at First Appearance Pre- and Post-CAFA, District Court In-Custody

Regression with Newey-West standard errors - lag(0)
Days from filing to Disposition Pre- and Post-CAFA, District Court Out-of-Custody

Regression with Newey-West standard errors - lag(0)
## Barry County, MI

<table>
<thead>
<tr>
<th>In-Custody</th>
<th>Immediate change direction</th>
<th>Immediate change amount</th>
<th>Change over time direction compared to pre-CAFA</th>
<th>Change over time amount compared to pre-CAFA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Days from filing to disposition</td>
<td>None</td>
<td>n/a</td>
<td>Increase</td>
<td>13.3 days per month</td>
</tr>
<tr>
<td>Percent sentenced to prison</td>
<td>None</td>
<td>n/a</td>
<td>Increase</td>
<td>2% per month</td>
</tr>
<tr>
<td>Percent sentenced to probation</td>
<td>None</td>
<td>n/a</td>
<td>Decrease</td>
<td>-5% per month</td>
</tr>
</tbody>
</table>
Average Days from Filing to Disposition Pre- and Post-CAFA, Circuit Court In-Custody

Regression with Newey-West standard errors - lag(2)
Salt Lake City, UT

- **Justice Court**
  - Local courts with limited jurisdiction over Class B and Class C misdemeanor infractions, violations of ordinances, and small claims.
  - CAFA program in place for in-custody cases

- **District Court**
  - Trial courts with jurisdiction over civil cases, criminal felonies, and certain misdemeanors.

- **Analysis: Propensity Score Matching**
  - Justice Court: Out-of-Custody cases
  - District Court: In-Custody and Out-of-Custody Cases
<table>
<thead>
<tr>
<th><strong>Outcome Analysis</strong></th>
<th>District Court In-Custody</th>
<th>District Court Out-of-Custody</th>
<th>Justice Court Out-of-Custody</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Days in jail between first appearance and disposition</strong></td>
<td>↓ -12.5 days</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td><strong>Days from filing to disposition</strong></td>
<td>↓ -71.0 days</td>
<td>↓ -123.3 days</td>
<td>↓ -129.3 days</td>
</tr>
<tr>
<td><strong>Any FTAs</strong></td>
<td>↓ -6%</td>
<td>↓ -16%</td>
<td>↓ -9%</td>
</tr>
<tr>
<td><strong>Total FTAs</strong></td>
<td>↓ -0.1 FTAs</td>
<td>↓ -0.4 FTAs</td>
<td>↓ -0.2 FTAs</td>
</tr>
<tr>
<td><strong>Bail amount</strong></td>
<td>—</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td><strong>Total hearings</strong></td>
<td>—</td>
<td>↓ -1.8 hearings</td>
<td>↓ -0.5 hearings</td>
</tr>
<tr>
<td><strong>Plead guilty at first appearance</strong></td>
<td>n/a</td>
<td>n/a</td>
<td>—</td>
</tr>
<tr>
<td><strong>Convicted</strong></td>
<td>—</td>
<td>—</td>
<td>↓ -7%</td>
</tr>
<tr>
<td><strong>Sentenced to prison</strong></td>
<td>↓ -12%</td>
<td>↓ -3%</td>
<td>n/a</td>
</tr>
<tr>
<td><strong>Prison sentence length (months)</strong></td>
<td>—</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td><strong>Sentenced to jail</strong></td>
<td>↑ +15%</td>
<td>↑ +7%</td>
<td>↓ -6%</td>
</tr>
<tr>
<td><strong>Jail sentence length (months)</strong></td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Sentenced to probation</strong></td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Probation sentence length (months)</strong></td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Sentenced to fines/fees</strong></td>
<td>n/a</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Fines/fees sentence (dollars)</strong></td>
<td>n/a</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>
Cost-Benefit Analysis
Cost-Benefit Analysis

- Use standard economic tools that have been developed and implemented over the past two decades to examine criminal justice outcomes
  - Relies on rigorous outcome evaluation to determine the effectiveness of programs or practice
  - Relies on marginal costs instead of average costs
  - Cost avoidance compared to cost savings
- The cost of the program or policy is compared to the benefits of avoided criminal justice system usage
- Not all benefits can be measured or monetized
Estimating Costs and Benefits

- **Program costs** – How much does it cost to provide counsel at first appearance?
  - Budget data that primarily includes wages and benefits of additional attorneys was divided by the number of clients who could be served by the additional staff

- **Outcome costs (benefits)** – What are the marginal costs of the criminal justice system?
  - Estimated the cost per day of jail and court hearings
  - Relyed on publicly available budget data and caseload data
  - Attempted to estimate costs of longer jail and prison sentences
Barry County, MI

• Program cost estimate
  – Based on staffing costs and the number of clients served the estimated cost of CAFA was $35 per case

• Jail cost estimate
  – Based on jail budget data and the average daily population the marginal cost of a day in jail was $45 per day

• Outcome data did not show significant reductions in time spent in jail from counsel at first appearance, meaning no cost-benefit analysis was performed

• However, the cost of one day in jail is greater than the cost of CAFA so even a one-day reduction in jail time would result in a net cost avoidance
Salt Lake City, UT

• Program cost estimate
  – Based on staffing costs and the number of clients served the cost of CAFA per in-custody client was $36

• Outcome evaluation showed reduction in pretrial jail bed usage and reduced sentences for those who were convicted
  – Estimated cost per day of jail was $68.54
  – Estimated reduction in jail days of 12.5
  – Total avoided costs of reduced pretrial jail bed usage was $857

• Each dollar invested in CAFA is expected to avoid $24 in pretrial jail costs

• Each client served by CAFA results in a net benefit of $821
Thoughts or Questions?
Thank you.
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